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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/350,474	07/09/1999	WILLIS L. WINSTROM	POC-99-1-1	8187

23531 7590 10/10/2003

SUITER WEST PC LLO
14301 FNB PARKWAY
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OMAHA, NE 68154

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 10/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

09

Application No.

350474

Applicant(s)

WINSTROM

Examiner

MEILLEY

Group Art Unit

1616

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

5/11/03

- ☒ Responsive to communication(s) filed on _____
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-3, 5-10, 57-75, 77-85, 87, 99-103 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 5-10, 57-75, 77-85, 87, 99-103 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 57, 66, 77, 87 and 101 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 depends on cancelled 4. "at least about" is indefinite – is 9.8g at least – it certainly is about.

Claims ~~5~~6, 60-62, 70-72, 80, 82, 83 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-104 of U.S. Patent No. 6,506,402. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent is obvious over the application, as chlortetracycline compositions, the same in both cases, are claimed; no patentable weight given to methods of preparation.

Claims 1, 2, 8, 57, 58, 60, 66-68, 70, 77-79, 81, 85, 87, 99-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forberg – DD 138273.

The rejection of record is maintained with added consideration of dosage addressed. Applicant's arguments are not persuasive; a composition is claimed the product is claimed in open guise, thus the composition is met by Forberg.

Further, see top of p.5 of translation – here is applicant's added fermented biomass, in another Forberg mode. The products have desired antibiotic potency (p.6, par. 3), and are intended to be added to premix base (page 2, 1st par. P.5, 1st full par)